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1961 SEP 23 2206/13

September 4, 1961

TO GENERAL CLIFTON FOR THE PRESIDENT
FROM MR. BUNDY *m. 10*

There follows a first State Department draft reply to the Soviet note of September 2nd on air access. State has circulated through Ambassadorial group and hopes to have concurrence in time for Wednesday or Thursday delivery, but note is wide open for Presidential criticism. In the light of the President's questions about Soviet note, this draft answer may be of interest. In addition President should know that we do not ordinarily use military aircraft for visits of West Berlin political figures except as a courtesy to outstanding individuals like Adenauer or Luebke. Political visitors this last week ^{and} there all went by civil aircraft.

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DRAFT REPLY TO SOVIET
NOTE OF SEPTEMBER 2, 1961

1. Air access to Berlin along the three corridors from West Germany is and has been unrestricted save in matters relating to air safety since the end of World War II in 1945.

2. West Germans who make use of this means of transportation to Berlin do so in pursuit of a variety of business, cultural, political or other objectives, individually chosen, in a manner which is familiar and well understood in societies where free men regulate their own lives in accordance with free choice. That the USSR should characterize such activities as criminal does not make them so. The attitude of the USSR towards freedom of travel is plainly shown in the recent actions by which a ^{prison} "Chinese wall" was built across the heart of Berlin. The authorities of the East German regime have fired on and even killed their fellow countrymen who were seeking [no more than] to enter West Berlin.

3. Rights with respect to air access to Berlin derive from precisely the same source as do the rights of the USSR in East Germany and East Berlin, namely, the joint military defeat of the German Reich and the joint assumption of supreme authority over Germany. These rights are confirmed by the circumstances under which the four powers entered Germany, by their subsequent discussions and agreements, and by open and ^{established} ~~notorious~~ practice over a period of 15 years.

The Soviet note

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The Soviet note refers to the report of the Air Directorate of the Allied Control Council (which the note incorrectly designates as the Military Air Directorate) and to the action of the Council itself regarding flight in the corridors. These documents reveal both the nature of the rights of the respective parties and arrangements as to the exercise of these rights. Paragraph 1 of the Air Directorate report states that "Because of the increasing number of flights between the Greater Berlin area and the respective occupied zones of the four Allied Powers in Germany. . .there is a real need to ensure safety of flights. . .by means of air corridors under strict rules of flight for all aircraft using the corridors." Paragraph 3 proposes six air corridors, three to points in the Western zones and three to points outside Germany, "which could be used by aircraft of the four Allied Nations with full freedom of action."

The Coordinating Committee of the Allied Control Authority on November 22, 1945, approved the following request from the Air Directorate: "To confirm the proposal for the establishment of air corridors West of Berlin as follows: BERLIN-HAMBURG, BERLIN-BUCKEBURG, BERLIN-FRANKFURT ON MAIN, each twenty English miles wide. Flight over these routes (corridors) will be conducted without previous notice being given, by aircraft of the nations governing Germany."

Lt. General Kutsevalov

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Lt. General Kutsevalov represented the USSR. On November 30, 1945, the Control Council itself approved this document, with Marshal Zhukov acting for the USSR.

Thus from the earliest days the Soviet Union recognized that the air corridors were to be used "by aircraft of the four Allied Nations with full freedom of action." This understanding is confirmed in the records of the subsequent quadripartite meetings. For example, at the meeting of the Air Directorate on April 30, 1946, the Soviet Delegate, Lt. General T. F. Kutsevalov stated:

"The Soviet Delegation thinks that the existing system of Air Routes through the Soviet Zones of Occupation in Germany is fully sufficient, not only to meet the requirements of the Allied Troops in the Sector of Greater Berlin, but also to carry out successfully all the Allied transportation needs for commercial cargoes regardless of their volume."

In February, 1947, in connection with preparations for the Council of Foreign Ministers meeting, the Western powers renewed a recommendation for establishing additional air corridors for civil flights to Berlin by aircraft of nations other than the four powers. The Soviet Union objected, on the ground, as stated in the USSR report dated February 5, 1947, that the quadripartite decisions establishing the three air corridors, provided adequate facilities to meet existing requirements.

The practice of

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The practice of the Western powers is equally significant in confirming the understanding as to air access. Civil aircraft of the Allied nations had been flying to and from Berlin on special charter flights from the early days of the occupation. On May 20, 1946, Pan American World Airways inaugurated regular weekly flights. In 1947 there were 52 such flights by Pan American. In 1948 there were 549 round trip flights by all carriers; in 1949 there were 4,776; in 1950 there were 6,974. All of these flights were processed as a matter of routine through the Berlin Air Safety Center on which the Soviet Union is represented. Civil air flights to Berlin continued unrestricted throughout the Berlin blockade and thereafter consistent with the New York Agreement of May 4, 1949, restoring the situation as it was before the blockade was imposed.

4. For the rest, the Soviet note consists merely in the repetition of many charges and allegations which the United States Government cannot accept and which it has discussed at length in its notes of July 17, 1961 and August 26, 1961, as well as in many previous communications on the subject of Germany and Berlin. *For example:*

5. The Soviet Government claims that the quadripartite status of Berlin was destroyed by acts of the United States Government and its Allies. But it is plain to see what divides Berlin in two. It is the wall of barbed wire and concrete built on the sector border by East German authorities in violation of solemn obligations freely and repeatedly undertaken

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repeatedly undertaken by the USSR. This may be "the true reality" which people living in the USSR or under the East German authorities must "look in the face." But the United States Government cannot admit that the arbitrary application of force can alter the legal or moral foundation of rights and obligations.

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6. The Soviet government refers to certain political relations between West Berlin and West Germany. The governing authorities of West Berlin are chosen by the people of West Berlin in free election and those authorities have freely approved or invited relations between West Berlin and West Germany, - such as the application of West German laws in West Berlin - which require governmental action. These relations are thus an aspect of self-determination, to which U.S. policy is devoted in Berlin as elsewhere. The United States Government does not believe that the proper relation between itself and the areas for which it has responsibility is one of domination and subservience. The relationships referred to are in fulfillment of the obligation undertaken by the four powers in Paris on June 20, 1949, after the Berlin blockade, to work for "Facilitation of the movement of persons and goods and the exchange of information between the western zones and the eastern zone and between Berlin and the zones." The policies of the USSR have been in flagrant violation of this undertaking. Indeed the Soviet note's criticism of normal and peaceful relations between these two parts of the same country is peculiarly inappropriate in view of the fact that the USSR and the East German authorities are seeking illegally to annex East Berlin by force.

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7. The Soviet Government again implies that its proposed "peace treaty" with the East German authorities can somehow alter the status of West Berlin. But such a "peace treaty" can at most have certain limited effects on the relationship between the Soviet Union and its former zone of occupation. The three Western powers recognized the principle involved when in their Convention on Relations with the Federal Republic of Germany, signed in Paris on October 23, 1954, they specifically retained the rights and responsibilities exercised or held by them relating to Berlin and to Germany as a whole, thus safe-guarding the positions of all countries concerned, including the Soviet Union. Indeed, the Soviet Foreign Minister, commenting on this very Convention on May 25, 19⁵49, made clear the view of the Soviet Government that agreements "concluded not with all the Powers who fought against Germany but only with a group of those powers, and not with the whole of Germany but only with a part" cannot seriously be regarded "as some sort of likeness to, or substitute for a peace treaty".

8. The United States Government is forced to conclude that the sweeping claims of the Soviet Government as to the effects of a "peace treaty" between the Soviet Union and the so-called German Democratic Republic are merely an effort to provide camouflage for the exploitation of certain advantages which the Soviet Government thinks it has because of the geographic location of Berlin. The Soviet note gives a foretaste of what

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Of what the "freedom" of West Berlin would be like if such a "peace treaty" were to be accepted. Although the note asserts again that the "free city of West Berlin of course will have the right to maintain unobstructed communication with the outside world..." the inference is plain that the right would not extend to anyone to whom the USSR or the East German authorities may choose to deny it by labelling him as a revanchist, militarist, spy, diversionist or subversive. The people of the world are by now sufficiently accustomed to the upside-down use of words in the Soviet lexicon not to be deceived by the cynical efforts to mislead them with such labels. Thus in Soviet usage a "revanchist" seems to be anyone who believes in self-determination for the German people; a "militarist" seems to be one who would afford the people of the Federal Republic and of West Berlin the right to arms and defense after the Soviet Government had created military forces in East Germany to supplement the vast Soviet forces maintained in that territory; a "spy" would seem to be anyone who is curious about what goes on in the world; a "diversionist" may be anyone who publicly opposes Soviet views as to right policy; while a "subversive" appears to be anyone who favors freedom of speech, assembly and movement.

9. It is plain for all the world to see that as of today there is free and peaceful movement of persons and goods between West Germany and West Berlin and free movement of goods between West and East Germany limited

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only by the Soviet action in making of East Germany and East Berlin a prison camp for the population of those areas. It is clear that any change in this situation will be the result of aggressive action against established rights by the Soviet Government and its East German minions. It is the duty of all states, especially in times like these of increasing tensions and dangers to international peace, to refrain from unilateral action to alter existing agreements and practices further increasing such tensions. The United States Government wishes to repeat in the most solemn terms the warnings already given in its note of August 26, 1961, and the White House statement of August 24, 1961, against any action to interfere with flights in the air corridors to West Berlin.

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